

13 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

No.	CV 18-08074-CBM (ASx)	Date	May 13, 2022
Title	<i>Alfred Lee Alfred, et. al., v. Walt Disney Company, et. al.,</i>		

Present: The Honorable	Alka Sagar, United States Magistrate Judge
-------------------------------	--

Alma Felix

CS 05/03/22

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendant

Patrick Arenz, Brandon Pakkebier

Jordan D. Segall

Steven T. Lowe, Aleksandra Hilvert,

Juliana M. Yee

Proceedings (In Chambers): **Order Granting-in-part Plaintiffs’ Motion to Compel Discovery Responses (Dkt. Nos. 228, 236); Order Granting Defendant’s Motion to Compel Discovery Responses (Dkt. Nos 232-33, 237-38).**

On March 25, 2022, the parties filed a joint stipulation regarding Plaintiffs’ motion to compel discovery from Defendant Walt Disney Pictures (“WDP”), together with declarations of counsel and exhibits in support of each party’s position. (“Plaintiffs’ Motion”) (Dkt. No. 228). On April 12, 2022, Plaintiffs filed a supplemental memorandum in support of their motion. (Dkt. No. 236). On March 29, 2022, the parties filed a joint stipulation regarding WDP’s motion to compel responses to contention interrogatories, together with declarations of counsel and exhibits in support of each party’s position. (“WDP’s Motion”) (Dkt. Nos. 232-33). On April 12, 2022, WDP filed a supplemental memorandum in support of the motion and the supporting declaration of counsel. (Dkt. Nos. 237-38).

A telephonic hearing was held on May 3, 2022. The Court has reviewed the filings and carefully considered the arguments made at the hearing. For the reasons stated below, Plaintiffs’ motion is GRANTED-IN-PART; WDP’s Motion is GRANTED.

13 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

No.	CV 18-08074-CBM (ASx)	Date	May 13, 2022
Title	<i>Alfred Lee Alfred, et. al., v. Walt Disney Company, et. al.,</i>		

A. Background

Plaintiffs’ complaint for copyright infringement of their screenplay, *Pirates of the Caribbean*, (“Screenplay”), by WDP’s feature film, *Pirates of the Caribbean, The Curse of the Black Pearl*, (“*the Curse*”) and the four films that followed, *Pirates of the Caribbean: Dead Man’s Chest*, *Pirates of the Caribbean: At World’s End*, *Pirates of the Caribbean: On Stranger Tides*, and *Pirates of the Caribbean: Dead Men Tell No Tales*, (collectively, “sequels”) was dismissed by the Court upon finding that the parties’ works were not substantially similar as a matter of law. (Dkt. No. 93). On July 22, 2020, the Ninth Circuit reversed the dismissal of Plaintiffs’ complaint, finding that “Plaintiffs’ screenplay shares sufficient similarities with the film to survive a motion to dismiss,” and that “[a]dditional evidence would help inform the question of substantial similarity” and “expert testimony would aid in determining whether the similarities Plaintiffs identify are qualitatively significant.” (Dkt. No. 103).

Following remand, the parties stipulated to Plaintiffs filing a First Amended Complaint, (“FAC”), asserting a single cause of action for “copyright infringement regarding the Pirates of the Caribbean Film Franchise.” (Dkt. No. 112). The Court granted the parties’ stipulation to dismiss all defendants except for Walt Disney Pictures and bifurcate discovery into two phases. (Dkt. No. 122). Phase one discovery was limited to initial disclosures, expert reports (initial and rebuttal) and one deposition of each side’s expert witness on the issue of substantial similarity. *Id.* The parties agreed that, after the completion of Phase one discovery, the parties would participate in mediation and, if mediation was unsuccessful, file motion(s) for summary judgment limited to the issue of substantial similarity. *Id.* The second phase of discovery “to encompass all issues, without limitation,” would commence after the Court ruled on the motion for summary judgment or after mediation if the motion was not filed. *Id.*

On December 16, 2021, the Court denied WDP’s motion for summary judgment on the issue of substantial similarity finding that “the parties’ expert opinions create a genuine issue of disputed fact regarding whether the works are substantially similar. (Dkt. No. 200).

13 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

No.	CV 18-08074-CBM (ASx)	Date	May 13, 2022
Title	<i>Alfred Lee Alfred, et. al., v. Walt Disney Company, et. al.,</i>		

B. Legal Standards

A party “may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). Nevertheless, information “need not be admissible in evidence to be discoverable.” Id. Thus, relevance, for purposes of discovery, is defined broadly, and “[d]iscovery of nonprivileged information not admissible in evidence remains available so long as it is otherwise within the scope of discovery.” Fed. R. Civ. P. 26(b)(1) advisory committee’s note (2015); see *Garneau v. City of Seattle*, 147 F.3d 802, 812 (9th Cir. 1998). However, under amended Rule 26(b), discovery must be “proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). This proportionality requirement “is designed to avoid . . . sweeping discovery that is untethered to the claims and defenses in litigation.” *Mfg. Automation & Software Sys., Inc. v. Hughes*, No. CV 16-8962, 2017 WL 5641120, at *5 (C.D. Cal. Sept. 21, 2017).

Motions to compel are governed by Rule 37, which allows a party to “move for an order compelling disclosure or discovery.” Fed. R. Civ. P. 37(a)(1). “A party seeking discovery may move for an order compelling . . . production . . . if . . . a party fails to produce documents . . . as requested under Rule 34.” Fed. R. Civ. P. 37(a)(3)(B)(iv). Rule 34 provides that a party may serve on any other party a request to produce documents or electronically stored information within the party’s possession, custody, or control that is otherwise within the scope of Rule 26. Fed. R. Civ. P. 34(a)(1)(A). “Upon a motion to compel discovery, the movant has the initial burden of demonstrating relevance.” *United States v. McGraw-Hill Companies, Inc.*, No. CV 13-0779, 2014 WL 1647385, at *8 (C.D. Cal. Apr. 15, 2014). Further, district courts have “broad discretion” to control discovery and in determining relevancy for discovery purposes. See *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (citation and alteration omitted).

13 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

No.	CV 18-08074-CBM (ASx)	Date	May 13, 2022
Title	<i>Alfred Lee Alfred, et. al., v. Walt Disney Company, et. al.,</i>		

C. Plaintiffs’ Motion

Plaintiffs move to compel responses to Requests for Production Nos. 23-29 and further responses to Interrogatory Nos. 11-15. These requests seek (1) financial information regarding the four sequel films to the original feature film, *Pirates of the Caribbean: The Curse of the Black Pearl*, and (2) financial information for the original film and the sequel films that pre-dates 2014. (Dkt. No. 228).

Sequel Film Discovery

Plaintiffs contend that financial information regarding the sequel films is relevant – *at least for discovery purposes* – to support Plaintiffs’ claim for actual damages based on a hypothetical license which would have included, as an industry standard, royalty payments for sequel films, as well as Plaintiffs’ claim for WDP’s indirect profits which includes profits from the sequel films as derivative works of the original film. (Plaintiffs’ motion at 28-32). In support of their claim for actual damages, Plaintiffs expect to present expert testimony that if they had been given a license, it would have included a royalty for any sequel films, and they point out that the agreement they received for a separate, unrelated movie project called *Red Hood* provided for royalties for sequels. *Id.*, at 29. In support of their claim for indirect profits, Plaintiffs assert that they have established the required causal nexus by asserting WDP’s infringement of their screenplay in the original movie and arguing that “but-for the first Pirates film,” the sequels would not exist. *Id.*, at 30.

WDP claims that Plaintiffs are not entitled to any financial discovery regarding the sequel films because the FAC does not allege that the sequels infringe Plaintiffs’ screenplay and Plaintiffs have failed to identify any elements from the Sequels that infringe their screenplay. *Id.* at 35, 38-39. In response to Plaintiffs’ claim regarding a hypothetical license that would include royalties for sequel films, WDP asserts that it is standard practice in the industry to provide royalty payments for sequels only when a writer receives “screenplay by” or “written by” credit and such determinations are made by the Writer’s Guild of America and not by the movie studios. *Id.*, at 36-37.

13 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

No.	CV 18-08074-CBM (ASx)	Date	May 13, 2022
Title	<i>Alfred Lee Alfred, et. al., v. Walt Disney Company, et. al.,</i>		

The Court agrees with WDP that Plaintiffs’ request for Sequel financial discovery to support a claim for actual damages based on a hypothetical license is speculative given that they would need screenwriting credit in order to receive royalties from sequel works. However, the Court finds that Plaintiffs have established a sufficient causal nexus to obtain Sequel financial discovery to support their claim for indirect profits. As Plaintiffs point out, the issue is not whether the sequels infringe the screenplay but whether the original movie “elevated the public’s interest in the [sequel]” so that “some profits from the [sequel] may have been indirectly attributable to the infringement of Plaintiff’s screenplays.” (Dkt. No. 236 at 2). Plaintiff’s entitlement to indirect profits is not wholly speculative given that the sequels contain the same main characters and other key elements from the original film. At the hearing Plaintiffs claimed that the copyright registrations for the sequels state that the sequels are based on pre-existing motion picture and story elements from the original movie. To the extent Plaintiffs have alleged that their screenplay was infringed by the original movie, the sequels are an extension of and borrow elements from the original movie. The Court finds that Plaintiffs have established a sufficient causal nexus to support their claim for financial information regarding the sequels.

Pre-2014 Financial Information

Plaintiffs seek pre-2014 financial information regarding the original and sequel films in order to “verify that the information from 2014 onward is accurate and comprehensive,” claiming that they cannot evaluate how WDP accounted for costs and expenses after 2014 without examining how costs and expenses were accounted for prior to 2014. (Plaintiffs’ Motion at 56). Plaintiffs also claim that pre-2014 financial information is relevant to refute WDP’s equitable estoppel defense. (Id., 56-57).

WDP contends that Plaintiffs are not entitled to pre-2014 financial information since they can only recover damages for the three year period preceding the filing of their lawsuit. (Id., at 58). WDP points out that Plaintiffs have not identified any accounting problem or inconsistency in the post 2014 financial data produced by WDP in support of their need to verify this information with pre-2014 financial data. (Id.). WDP also asserts that since it is not relying on any evidence of financial “consequent loss” outside the limitations period to support its equitable estoppel

13 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

No.	CV 18-08074-CBM (ASx)	Date	May 13, 2022
Title	<i>Alfred Lee Alfred, et. al., v. Walt Disney Company, et. al.,</i>		

affirmative defense, Plaintiffs are not entitled to pre-2014 financial information on this ground. The Court agrees. Plaintiffs’ copyright claim is subject to a three year statute of limitations which defines the period for which they can recover damages. Petrella v. Metro-Goldwyn-Mayer, Inc., 572 U.S. 663, 671, (2014). The limitations period places a presumptive limit on the scope of discovery under Rule 26(b)(1). Oppenheimer Fund, Inc., v. Sanders, 437 U.S. 340, 351-52 (1978). Plaintiffs have not demonstrated that pre-2014 financial information is relevant to the issues in this case, for example, by explaining what pre-2014 accounting procedures or specific items need to be reviewed in order to assess the accuracy of the post 2014 financial information. Plaintiffs also fail to explain how pre-2014 financial revenues, costs and expenses would shed any light on financial irregularities in the post-2014 financial records that have been produced given the summary format of the financial information produced by WDP. To the extent WDP is not relying on “consequent loss” outside the statute of limitations to support its equitable estoppel defense, Plaintiffs’ request for pre-2014 financial records is not relevant to address WDP’s defense.

D. WDP’s Motion

WDP seeks responses to four contention interrogatories requesting Plaintiffs to (1) identify the elements of the screenplay that they contend were infringed (Interrogatory No. 4); (2) state all facts supporting Plaintiffs’ contention that each of the allegedly infringed elements in the Screenplay constitute original expression that is subject to protection under copyright law (Interrogatory No. 5); (3) identify the elements of *the Curse* or its sequels that allegedly infringes the Screenplay (Interrogatory No. 6); and (4) state all facts supporting their contention that WDP copied their Screenplay (Interrogatory No. 8). WDP claims that it needs a definitive statement of the specific elements that Plaintiffs allege WDP copied from their screenplay which Plaintiffs intend to present at trial in order to assert their defenses. (WDP’s motion at 10-11). WDP points out that since Plaintiff have, during the course of this litigation, compiled various and often contradictory lists of alleged similarities between the Screenplay and *the Curse*, they should not have to guess which similarities Plaintiffs intend to present at trial. Id., at 14.

Plaintiffs object to the contention interrogatories on the ground that *any* discovery about substantial similarity violates the parties’ agreement to bifurcate discovery. (WDP’s motion at 4-

13 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

No.	CV 18-08074-CBM (ASx)	Date	May 13, 2022
Title	<i>Alfred Lee Alfred, et. al., v. Walt Disney Company, et. al.,</i>		

5). WDP points out that the parties’ agreement to bifurcate discovery and proceed first with discovery regarding substantial similarity was intended to facilitate the efficient resolution of a motion for summary judgment on the issue of substantial similarity by focusing discovery efforts on expert testimony regarding that issue instead of engaging in costly and burdensome fact discovery on other issues. The Court agrees. There is no merit to Plaintiffs’ argument that the parties intended to forfeit any right to take non-expert discovery regarding substantial similarity if the summary judgment motion was denied. The parties’ stipulation regarding bifurcation of discovery, the declarations submitted by counsel, and the parties’ communications regarding bifurcation support WDP’s position that the parties agreed to bifurcate discovery in order to find out whether the case would be *resolved on a summary judgment motion* rather than completely forfeit any right to take non expert discovery on the issue of substantial similarity if the summary judgment motion was denied.

Plaintiffs object to the request, in Interrogatory Nos. 5 and 8, to “state all facts” as overbroad and unduly burdensome. However, Plaintiffs have not provided any information to support their claim that responding to the interrogatories would be *unduly* burdensome and that objection is overruled. The Court finds the phrase, “state all facts” to be overbroad. After hearing from the parties, the Court finds that WDP’s agreement to narrow the request in Interrogatory No. 5 to individual elements that would be subject to protection and selection and arrangement of elements that would be independently subject to protection, and to limit the request in Interrogatory No. 8 to any additional facts, not alleged in the FAC, appropriately tailors the request to information pertaining to Plaintiffs’ claim that WDP copied their Screenplay. Plaintiffs also object to Interrogatory No. 8 to the extent it seeks information about the sequels since they are not asserting an infringement claim with respect to the sequel movies. At the hearing, WDP agreed to limit Interrogatory No. 8 to only information about *the Curse* if Plaintiffs confirm that they are not contending that the Sequels infringed their Screenplay. Plaintiffs’ relevance objection to Interrogatory No. 6 is overruled.

\\

\\

13 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

No. CV 18-08074-CBM (ASx) Date May 13, 2022

Title Alfred Lee Alfred, et. al., v. Walt Disney Company, et. al.,

E. Conclusion

Plaintiffs’ motion to compel responses to discovery requests regarding financial information about the sequels is GRANTED as set forth in this Order. Discovery requests directed to the Pirates of the Caribbean “franchise” refer to the original movie, *The Curse*, and the four sequel films. WDP may produce the requested financial information in a summary format. The parties are ordered to meet and confer regarding any request by Plaintiffs for financial discovery regarding the sale of merchandise related to the Pirates of the Caribbean franchise.

Plaintiffs’ motion to compel discovery of pre-2014 financial information for *the Curse* and the sequels is DENIED without prejudice.

WDP’s motion to compel responses to Contention Interrogatory Nos. 4, 5, 6 and 8 is GRANTED, consistent with this Order.

The parties are directed to meet and confer regarding a time frame for compliance with this Order.

The parties may avail themselves of the Court’s informal discovery dispute resolution process to resolve any remaining discovery issues. (See Judge Sagar’s Procedures).

IT IS SO ORDERED.

cc: Consuelo B. Marshall
United States District Judge

Initials of Preparer _____ : 50
AF
